

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION

CROSSFIT, INC.

PLAINTIFF

VS

CIVIL ACTION NO. 1:13-CV-00144-GHD-DAS

COLUMBUS CROSSFITNESS LLC;  
CHANCE WIYGUL; and JOHN DOES 1-25

DEFENDANTS

**CROSSFIT, INC.'S MOTION FOR DEFAULT JUDGMENT  
AND PERMANENT INJUNCTION**

COMES NOW Plaintiff CrossFit, Inc., by and through counsel, and, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, files this its Motion for Default Judgment and Permanent Injunction, and in support thereof would show the Court as follows, to-wit:

1.

Plaintiff filed its Complaint in this matter on or about August 6, 2013, naming as Defendants Columbus Crossfitness, LLC, Chance Wiygul, and John Does 1-25. (Doc. #1).

2.

On or about August 15, 2013, the Defendant, Chance Wiygul, was personally served with the Summons and Complaint in this cause. (Doc. #4, Proof of service upon Chance Wiygul). Also on August 15, 2013, Columbus Crossfitness, LLC, was served with the Summons and Complaint via personal service upon its agent for service of process, Chance Wiygul. (Doc. #5, Proof of service upon Crossfitness, LLC, by and through Chance Wiygul). The Defendants' answers to CrossFit's Complaints were therefore due on or about September 5, 2013. Rule 12(a)(1)(A)(I), Federal Rules of Civil Procedure.

3.

Defendants Columbus Crossfitness, LLC and Chance Wiygul did not respond to Plaintiff's

Complaint by September 5, 2013, as required by the Federal Rules of Civil Procedure, and as of the date of this Motion have failed to plead or otherwise appear in this case.

4.

On October 7, 2013, the Clerk filed with the Court his Notice of Past Due Answer as to Columbus Crossfitness, LLC and Chance Wiygul. (Doc. #10). On October 15, 2013, Plaintiff CrossFit, Inc., filed its Application for Clerk's Entry of Default, (Doc. #11), and the Clerk's Entry of Default in this matter against Defendants Columbus Crossfitness, LLC and Chance Wiygul was entered on the record in this matter on October 16, 2013. (Doc. #12).

5.

Pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, the Court may enter a judgment for the Plaintiff and determine the appropriate measure and amount of damages to be awarded in those cases in which a Plaintiff's claim is not for a sum certain or for a sum that can be made certain by computation.

6.

As set forth in Plaintiff's *Memorandum Brief in Support of Crossfit, Inc.'s Motion for Default Judgment and Permanent Injunction*, filed contemporaneously with this Motion, Plaintiff CrossFit, Inc. is the owner of a valid and legally protectable trademark in the CROSSFIT® marks, unlawfully used by Defendants in their business as Columbia Crossfitness, LLC, and in their facility, Crossfitness 24/7. Despite repeated efforts by Plaintiff to secure Defendants' removal of all infringing use of its CROSSFIT® marks, Defendants failed to remove them, even as they represented to CrossFit's counsel steps they had taken to comply. Defendants' use of the mark was of a character, and used in a manner, that was likely confuse a prospective purchaser into believing that

the infringing services of Defendants were genuine CrossFit services, which in fact was never the case.

7.

As a result of Defendants' wrongful use of CrossFit's marks, Plaintiff has suffered damages, and, unless Defendants are permanently enjoined from its infringement of the CROSSFIT® marks, will continue to suffer irreparable injury, including but not limited to the loss of control of its reputation, loss of trade, and loss of goodwill. In the circumstances, Plaintiff is entitled to its damages, Defendants' profits gained by their infringement, statutory damages, and attorney's fees, in addition to a permanent injunction.

8.

For all the foregoing reasons, Plaintiff respectfully prays that the Court will enter a Default Judgment against Defendants Columbus Crossfitness, LLC and Chance Wiygul, and each of them, and will order that Columbus Crossfitness, LLC and Chance Wiygul, individually and collectively, be ordered to pay to Plaintiff Crossfit \$75,000.00: consisting of \$61,381.80 in damages and profits, in statutory damages, \$12,426.61 in attorney's fees, and \$1,191.59 in costs; and further, that Columbus Crossfitness, LLC and Chance Wiygul, individually and collectively, for themselves and their principals, partners, agents, servants, employees, independent contractors, and all persons in active concert and participation with them, be permanently restrained and enjoined from infringing upon the "CrossFit" trademarks and from using any confusingly similar terms, in any manner, and in any media, whatsoever.

The following Exhibits are attached hereto and support of this motion:

- A. Exhibit "A," Affidavit of Marshall Brenner, Esquire;
- B. Exhibit "B," *Order Granting Motion for Preliminary Injunction* entered in *CrossFit*,

*Inc., v. Maximum Human Performance*, Case No. 12cv2348-BTM-MDD in the U.S. District Court, Southern District of California;

- C. Exhibit "C," CrossFit, Inc.'s Service Mark Registration No. 3,007,458 for use in connection with fitness training services issued on October 18, 2005 by the U.S. Patent and Trademark Office;
- D. Exhibit "D," Affidavit of Christina Bobb, Esquire;
- E. Exhibit "E," Business entity information for Defendant Columbus Crossfitness, LLC filed with the Business Services division of the Office of the Mississippi Secretary of State dated March 14, 2014, as found at <https://business.sos.state.ms.us/corp/soskb/Corp.asp?563370>
- F. Exhibit "F," Corporation System Search Results for the term "crossfit" dated March 14, 2014, from the Mississippi Secretary of State's public information website, as found at <https://business.sos.state.ms.us/corp/soskb/SearchResults.asp?FormName=CorpNameSearch&Words=Any&SearchStr=crossfit&SearchType=Search;>

RESPECTFULLY SUBMITTED, this the 14th day of March, 2014.

**CROSSFIT, INC., PLAINTIFF**

BY: s/ Christina G Bobb  
OF COUNSEL

BY: s/ Nancy Siples Brumeloe  
OF COUNSEL

**CERTIFICATE OF SERVICE**

I, the undersigned, of counsel for Plaintiff, CrossFit, Inc., do hereby certify that I have this day served via U.S. First Class Mail, postage prepaid, a true and correct copy of the above and foregoing *Crossfit, Inc.'s Motion for Default Judgment and Permanent Injunction* to:

Chance Wiygul  
208 Conway Road  
Columbus, MS 39705

Columbus Crossfitness, LLC  
c/o Its Registered Agent  
Chance Wiygul  
208 Conway Road  
Columbus, MS 39705

This the 14<sup>th</sup> day of March, 2014.

s/ Nancy Siples Brumeloe  
OF COUNSEL

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